

C-46

Comment Info: =====

General Comment: Comment to Notice of Proposed Rule Making RIN 1901-AB21 (the "NOPR")

As an enterprise committed to the commercialization of innovative technologies which avoid, reduce, and sequester air pollutants and greenhouse gases, Abengoa Bioenergy New Technologies ("ABNT") welcomes the opportunity to share its comments to proposed rule, 10 CFR Part 609, applicable to the Department of Energy (the "DOE") loan guarantee program (the "Program").

These comments are specifically in reference to the invitation for comment on the alternatives set forth in the NOPR for the regulatory definition for "Commercial Technology," the employment of which shall cause a project to be ineligible for the Program. Assuming that eligibility of a project is determined anew at each major stage of the proposed process (rather than at the point of solicitation or the submission of response to a solicitation/invitation), ABNT strongly encourages the DOE to select the definition which utilizes time from first commercialization as the

basis for the definition (if one and only one of the proposed definitions must be selected). It should be considered axiomatic that it is in the best interest of the

Program to encourage competition from among a number of projects which are eligible under a given solicitation or invitation to apply. Stated another way, it is against the interests of the loan program to discourage the participation of sponsors with promising projects, and such sponsors will be dissuaded from initiating and continuing to invest time and resources in a loan guaranty selection process if the eligibility of a project is uncertain over time. In a regime wherein the determination of the eligibility of project is revisited at numerous points in the process (as proposed, at least all the way through the execution of a Loan Guarantee Agreement according to proposed rule 609.10(d)(1)), the certainty that a project will remain eligible at some point in the future is secured when eligibility is based on a fixed window of time, and is frustrated when eligibility is based upon

the contemporary achievement of a threshold number of projects which have employed a given technology at a point in time. Whereas time deadlines can be scheduled and planned, the number of projects employing a technology at some point in the future cannot be accurately estimated (especially considering that some or all of those eligibility-defeating projects may not be publicized). Therefore, the sustained certainty of a project's eligibility during the proposed process, which is provided by a time-based standard but not by a numerical threshold standard, provides a strong incentive for sponsors to make the commitment to submit projects at the outset.

Even if the determination of whether a project employs a "Commercial Technology" is made definitively once at the pre-Application stage, the time-based standard is still preferable because it requires that a single point in time be identified (the commencement of the first project employing the technology) rather than additionally identifying each project employing the technology (some of which may not be readily ascertained).

Given a preference for the time-based standard, ABNT does not have any broadly applicable data which would lend support to how many years would be the proper standard or whether a different standard should be established for different technologies. That said, if a fixed measure of time is necessary at the rulemaking stage, a five year standard comports with ABNT's experience. Perhaps a superior approach would be to set the numerical portion of the standards by which "Commercial Technology" is defined in each solicitation or invitation. Our

reading of the Continuing Resolution does not imply that the final regulations must specify in such detail what the technical factors have to be or that the standards must be fixed numerically in the final regulation. Rather, it simply requires the issue of final regulations "that include programmatic, technical, and financial factors the Secretary will use to select projects for loan guarantee.